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THE CLINICAL LAWYER-SCHOOL: THE CLINIC

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In considering the Clinical Lawyer-School as a means of legal education,¹ one must determine, if he can, (1) the objective of legal education, (2) whether the adoption of such a method will attain it in whole or in part, and (3) to what degree, if any, it will be more effective than the means and methods now employed.

The professional activities of the lawyer are called the "practice of law". The objective of legal education therefore should be to fit the prospective lawyer for law practice. Of what operations is the practice of the law composed? What functions will embryonic lawyers be called upon to perform in their professional era? Here one becomes involved in a labyrinth of confusion. The profession of the law is identified with a wide range of human activities. These vary with dissimilar geographical and economic conditions; between urban and rural areas; between one specialty and another in law practice itself. As these factors vary, so does the type and degree of training and skill necessary for successful practice. These and similar considerations have tended to make law school training general in character, as the inevitable result of the quest for educational factors common to the practice of law in all localities, to all allied professional activities of the lawyer, and to all specialties within law practice. Concurrently the time available for law training has been limited by tradition and by unrelated circumstances such as the attitude of the bar and the economic

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1. The present paper was suggested by, and is in response to: Frank, *Why Not a Clinical-Lawyer School?* (1933) 81 U. OF PA. L. REV. 907; Gardner, *Why Not a Clinical-Lawyer School?—Some Reflections* (1934) 82 U. OF PA. L. REV. 785. The proposal for the establishment of a law school in which clinical methods would be employed largely is not new. See Rowe, *Legal Clinics and Better Trained Lawyers—A Necessity* (1917) 11 ILL. L. REV. 591.

resources of the average student. As a result, the study of law has been constricted in our law schools to a consideration of legal principles, to development of a mental discipline, and to the liberal education possible through consideration of case records of human experience. No one can deny successfully that these partially train the student for the practice of the law; but legal educators have stated frankly that such training does not produce a finished practitioner.² It is not that which is included in the curricula that occasions criticism; the complaint is rather that the educational process does not go far enough, in that no training is given in the common operations constituting the bulk of legal work nor in the technique of the law office. Some of the common factors which remain neglected are these: (1) the interview, the effective examination of clients and witnesses; (2) effective legal research; (3) the processes and practice of draftsmanship: the production of effective legal instruments, pleadings, and briefs (office memorandums, trial briefs, appellate briefs); (4) advocacy, including trial methods and technique, and the decorum of the court room; (5) employment of non-litigious procedures, such as conciliation, compromise, and arbitration; (6) analysis and strategy involved in the effective employment of legal machinery or other social resources of the community to solve the client's problem; (7) law office management; (8) the art of attracting and holding a clientele, effectively and ethically.

The legal clinic is the hub of the Clinical Lawyer-School as proposed by Mr. Jerome Frank.³ One surmises that the clinical method is advocated there as a more effective means of training students for litigation. Valuable as the legal clinic is for this purpose, its principal usefulness rests in the

2. Consult the articles cited *supra* note 1.

3. Frank, *supra* note 1. Mr. Frank proposes that the everyday activities of practice be made a large part of the study of the law students through: (1) the study of complete records in appellate cases, rather than the use of casebooks; (2) more student contact with the courts; (3) training in a legal clinic; and (4) until the above methods are worked out, by placing the students in law offices for apprenticeship training. It is proposed also that background instruction in economics, history, anthropology, psychology and political science be correlated with formal law school instruction, and given concurrently with it. The increased demands upon the students' time through the adoption of these plans are to be met by eliminating casebook instruction for the most part, retaining some casebook courses for the skill developed in brief making. To bring the student in closer touch with the practical, Mr. Frank proposes that the faculty be composed largely of men who are experienced law practitioners.

Mr. Gardner, in his article, *supra* note 1, surveys historical backgrounds, to the end of showing that the practice of law has now become an auxiliary business, that the Bar has lost its leadership, and is in a decline. Analysing Mr. Frank's proposals through the historical "spectrum," Mr. Gardner concludes: (1) that legal education by apprenticeship has been characteristic of the great periods of the law; (2) that the conditions for effective legal training by apprenticeship do not now exist; (3) that it may be doubted whether the "Clinical-Lawyer School" approaches the idea less remotely than methods at present employed—that Mr. Frank has proposed "the re-creation of the mediæval Inns of Court at a time when circumstances forbid this to be done," *id.* at 801; (4) that the immediate task of law schools is to develop and teach a system of legal thought which is suited to the necessities of the times; (5) that the Bar's immediate task is to create conditions under which the administration of government and justice can again be looked upon as a career; and (6) that the re-creation of a system of legal apprenticeship must await the completion of the tasks of the law school and the Bar.

fact that it makes it possible for a law school faculty more effectively to give instruction in some or all of these neglected factors in law school training. It makes it possible to reveal and build up the capabilities of the student, and to help him overcome handicaps which would otherwise be carried into law practice.

The legal clinic is not a new device for legal education. It exists officially or unofficially at many law schools. The term "legal clinic" means to law what "medical clinic" used to signify in medicine; but as yet there is no purely legal term to describe the application of the clinical method to law teaching.⁴ A legal clinic must be distinguished from a legal aid society. Both aid indigent clients by giving legal service, but while such work is the primary function of the legal aid office, legal education is the main task of a legal clinic. The legal aid society ordinarily does not undertake clinical work in law, but by arrangement between some law schools and legal aid societies, students sometimes are permitted to work in the legal aid office.⁵ This is similar to other law office work and possesses the same limitations; it is the situation many law teachers have in mind when the term "legal clinic" is used, and in which they see no advantage as a method of law school training. Even at Harvard⁶ and Wisconsin, where the legal aid societies are staffed and operated by law students,⁷ we do not have real legal clinics. There is another type of "clinic" where law students receive instruction in handling actual cases in legal aid societies, and where faculty members are employed to give detailed instruction in and demonstration of correct procedures. This is true at Minnesota,⁸ at the University of Pitts-

4. See Maguire, *Legal Aid Clinics—A Definitional Comment* (1934) 7 AM. L. SCHOOL REV. 1151, 1152.

5. This alliance between legal aid societies and law schools has existed for many years, officially and unofficially. At present, on information and belief, it may be stated to exist at the University of Cincinnati, the University of Utah, the University of Minnesota, the University of California, Hastings College of Law, Western Reserve (occasionally), Yale University (formerly), Harvard University (in conjunction with the Boston Legal Aid Society), Stanford University (in conjunction with the Alameda County Legal Aid Society), Ohio State University, and formerly at the University of Denver (which contends with Harvard and Northwestern for the honor of being considered the pioneer in legal clinical work). The University of Pittsburgh has worked with the society in that city and has furnished supervision for the work. There are undoubtedly others in being or in prospect.

6. See Dudley, *The Harvard Legal Aid Bureau* (1931) 17 A. B. A. J. 692.

7. Here the students manage the enterprise. Vigorous student work may make the legal aid society very effective from time to time. At both Harvard and Wisconsin student management has not been uniformly successful. At Harvard, the almost complete cessation of legal aid work over the summer period breaks continuity of endeavor, and, I am informed, requires much time each year for reorganization of the legal aid work. These are not true clinical endeavors because of the lack of continuous detailed supervision by skilled practitioners. On the other hand, the fact that the students themselves are taking the full responsibility adds zest to these enterprises. At Harvard, the students undertaking the legal aid are honor students, and there is a working arrangement with the Boston Legal Aid Society, whereby a legal aid worker attends the Harvard Legal Aid Bureau one day a week as a consultant.

8. At the University of Minnesota, members of the third year class are required to serve as assistants in the office of the legal aid society during assigned periods of work. The work is supervised by faculty members, of whom Professors Wilbur H. Cherry, Maynard E. Persig, William L. Prosser, and Walter W. Finke have become well known throughout the legal aid field.

burgh,⁹ and at the University of California.¹⁰ There are a few fully developed legal clinics in which the instruction not only is carried on by faculty members but where clinical facilities are maintained for the purpose at the law school itself. Such clinical arrangements exist at the law schools of the University of Southern California¹¹ and of Duke University.¹² The three clinics at Northwestern University Law School¹³ are organized sim-

9. At the University of Pittsburgh, the work was carried on for a number of years by Professor Gustav Schramm, who recently became the first Judge of the Juvenile Court in Pittsburgh.

10. Under an arrangement with the Alameda County Legal Aid Society, a limited number of students have the opportunity of working with the society under the supervision of Professor Robert E. Stone. The course is listed by the School of Jurisprudence at Berkeley as an Advanced Practice Course, and has consisted both of general legal aid work and of special studies based upon the legal aid experience.

The Hastings College of Law at San Francisco, a branch of the University of California, has effected an arrangement with the Legal Aid Society of San Francisco. Third year students whose applications have the approval of the faculty may participate. Students must attend the legal aid office at least one day per week; and every Friday a two hour seminar is conducted, in which the students and the instructor discuss all pending matters. The attorney for the society, Mr. Alex Sheriffs, is in charge of the student work and is an instructor in the law college.

11. At the University of Southern California, legal aid clinic work is a required course for all third year students. It is conducted by a Director (the writer of this article), one paid part-time attorney, eleven other part-time attorneys (unpaid), a secretary, two stenographers, a statistician and a receptionist, using the services of the other members of the faculty and of members of the Bar in addition to the staff itself. A class period of one hour a week is used for seminars. Each student is on duty in the clinic once a week for an entire afternoon and, in addition to this period, uses other available time for the routine work assigned to him. Five students are on duty each afternoon. Two serve as interviewers; two are assigned to the secretary for office assistants, and are required to learn something of law office management and operation under her direction; the fifth man is assigned to the Director as an assistant, and acts as an understudy in determining matters of policy, in handling contacts with social agencies, the Bar and other legal aid organizations, and may be asked to aid in handling the routine law office work on the Director's desk, involving a correspondence control of all the case-load of the office. In addition, from time to time, this fifth man will make a supervised test interview. This contact with the Director allows an opportunity, under unforced circumstances, to aid in the solution of the personal difficulties of the student. As to details of operation, see DAVID, *MANUAL OF THE LEGAL AID CLINIC* (1933), based upon BRADWAY, *A HANDBOOK OF THE LEGAL AID CLINIC OF THE UNIVERSITY OF SOUTHERN CALIFORNIA* (1931).

The Legal Aid Clinic at the University of Southern California was first organized for educational purposes by Dean Justin Miller and Professor John S. Bradway, both of whom are now at the Duke University Law School, where a legal clinic likewise was inaugurated with the cooperation of the local Bar. See Bradway, *The Beginning of the Legal Clinic of the University of Southern California* (1929) 2 So. CALIF. L. REV. 252; *The Nature of a Legal Aid Clinic* (1930) 3 So. CALIF. L. REV. 173; *Legal Aid Clinic as a Law School Course* (1930) 3 So. CALIF. L. REV. 320; *Legal Aid Clinics and the Bar* (1930) 3 So. CALIF. L. REV. 384; *Administrative Problems of the Legal Aid Clinic* (1930) 4 So. CALIF. L. REV. 103; *The Legal Aid Clinic: A Means of Building Tough Mental Fiber* (1931) 5 So. CALIF. L. REV. 36; David, *Legal Aid and the Lawyer* (1932) 7 STATE BAR JOUR. (CAL.) 28; Bradway, *The Legal Aid Clinic—A Means of Coordinating the Legal Profession* (1931) 79 U. OF PA. L. REV. 549.

12. See ANNUAL REPORT, LEGAL AID CLINIC (1934) 29 *et seq.*, for a general outline of the operation of the Duke University Legal Aid Clinic. The routine of the student work and of instruction is substantially that described in the present article. This clinic handles approximately 300-400 cases a year.

13. The training required is in the Legal Clinic, Civil Branch. This clinic is operated under the direction of Professor Love, Miss McNamara and the attorneys of the Legal Aid Bureau of the United Charities of Chicago. The student must take this work for six mornings a week for an eight-week period, the class being divided into four eight-week groups during the long session. Two hours a week in classroom work are required in the eight weeks

ilarly, save that there all clinical work does not take place at the law school itself. In these law schools, all third year students must complete the clinical training as a requirement for graduation, save that at Northwestern the members of the Legal Publications Board are exempted.

In a legal clinic the law student works for real clients upon real cases. In common with the legal aid society, the legal clinic has a clientele composed of persons who, because of indigence, find it difficult to procure legal services. The attitude of the local Bar is the main factor in determining how poor a client must be before he is entitled to such aid. In Boston and New York it appears that legal aid societies are poor men's law offices. They are not precluded from receiving small fees for the services rendered—the client pays such fees as he is able to pay. In other sections of the United States, where lawyers are numerous and legal business is scant, a very restrictive policy is adopted. The experience of existing legal clinics indicates that any law school situated in a center of population of 50,000 or more people can secure a satisfactory volume of clients. The clients aided are of all races, colors and creeds, and include both sexes.

The Southern California legal aid clinic has handled over 12,000 cases in the past four years. At Duke University effective work on several hundred cases annually is being given with a small population to draw upon, and to some extent the Duke law school clinic is providing statewide legal aid service.¹⁴ Students handle, in a legal clinic, a great variety of legal matters.¹⁵

preceding the time when the student goes into the clinical work itself. This time is spent in a study of the applicable local procedure and the local courts. A maximum of twelve students may be registered for the clinical work in any one period.

In addition, the Criminal Branch of the clinic, under the supervision of Professor Newman F. Baker, is conducted as a semester course. The work involves a two hour class period and from three to six hours in the field each week. The work includes investigation of the cases, their preparation for trial, and may include attendance at the trial itself. The work is connected with various agencies of the Bar, such as the Public Defender's office.

The Industrial Injuries Branch of the clinic has achieved an enviable reputation. Under Professor Edwin F. Albertsworth and Mr. Daniel Carmell, cases are handled before the Illinois Industrial Commission. Cooperation is had with Chicago doctors and surgeons. The course involves one hour of class instruction and three or more hours of clinical work per week.

14. Many lawyers have sent in requests to the Duke University Legal Clinic, asking help in preparing briefs. Since the University has good library facilities, this is a real service to the Bar. Such briefs have been prepared in 79 cases since 1931.

At Mercer Law School, a clinic has been organized "to offer a service to lawyers over the State who because of limited library facilities, are unable to examine all the authorities on questions of law before them. Lawyers are invited to send in such questions, after having exhausted their facilities, and the Clinic purports to take each question and, by means of the adequate library at its command, prepare and return to the lawyer a complete brief on the question submitted." 21 MERCER UNIV. BULL., LAW SCHOOL NUMBER, 12 (1934-35).

15. In the first 8000 cases at the Southern California Legal Clinic, the following number of applications for assistance were made within the legal fields indicated: Wages, 151; Promissory Notes, 162; Money Claims, 451; Installment Contracts, 145; Garnishments, 44; Insurance, 63; Partnership, 58; Breach of Contract, 383; Investments (principally bad ones), 90; Workmen's Compensation, 52; Personal Injury Cases, 222; Complaints against Attorneys, 101; Libel and Slander, 21; Fraud, 82; Miscellaneous Torts, 162; Real Property, 1029; Landlord and Tenant, 601; Personal Property, 144; Estates of Deceased, 315; Insanity Proceed-

The typical legal clinic office is maintained for the training of the student. Physical facilities, funds permitting, are as good as that of any law office; the library facilities are better. The clinic has recourse to specialists in all fields of substantive law—the members of the law faculty as a whole. In the universities where legal clinics are established, the members of the clinic staff have recourse to specialists in medicine,¹⁶ physics, chemistry,¹⁷ psychiatry,¹⁸ and the social sciences generally, and also have used the facilities of the school of religion¹⁹ to adjust clients' difficulties. The close integration of clinical work with that of social agencies and governmental bureaus²⁰ gives the student a perspective of community resources available to him in the practice of his profession which seldom would be disclosed by apprenticeship training in a law office.

In the law school clinics the work of the student is that of a law clerk, but there is this difference: whereas in a law office the student's sugges-

ings, 37; Estates of Minors, 10; Domestic Relations, 1860; Community Property, 4; Breach of Promise, 1; Parent and Child, 59; Nonsupport of Children (not involving divorce, separation or annulment), 121; Adoption, 61; Guardianship of Minors, 151; Custody of Minors (not involving guardianship, divorce, separate maintenance or annulment), 102; Crimes against Children, 11; Nonsupport of Parents, 18; Bastardy Cases, 19; Establishment of Fact of Birth, 9; Establishment of Existence of Presumption of Death, 6; Miscellaneous Criminal Matters, 74; Taxation, 1; Patents and Copyrights, 48; War Claims, 15; Claims against Employment Offices, 2; Drafting Documents (not connected with other matters previously classified), 29; Complaints against Medical Profession, 11; Naturalization, 7; Pensions, 25; Seamen's Wage Cases, 5; Unclassified, 1217.

16. Doctors from the medical school have given advice in difficult personal injury cases and in compensation cases, and have gone into court with the clinic attorneys when these matters have been tried. In difficult domestic relations problems, where medical problems were present, the clients were referred to the medical school clinic, and in some cases to the Institute of Family Relations, which has its own staff of medical men.

17. The specialists in physical sciences have given advice in matters relating to patents, and in some contract cases involving the performance of machines.

18. Many psychopathic clients come to the clinic, and are referred to existing agencies for treatment. In cases involving Child Welfare, as a concomitant of domestic relations matters, the Child Guidance Clinic and its staff have served.

19. In proper cases, great help is gained in settling family disputes, neighborhood quarrels, and, in foreign neighborhoods, in giving confidence to the client in his dealings with the clinic. In one instance, the Archbishop of a church secured a return of embezzled property from a resident of his diocese when legal means were utterly futile because of want of evidence.

20. Statistics are boring, but they illustrate the possibilities. Sources of reference for cases at the University of Southern California clinic included the following in the first 8000 cases: Federal Court Judges and Commissioners, 9; U. S. Veterans' Administration, 35; Judges and Attaches, Superior Court, 229; Industrial Accident Commission, 35; State Insurance Commissioner, 3; State Labor Commissioner, 23; State Banking Commissioner, 1; State Real Estate Commissioner, 82; State Corporation Commissioner, 22; Governor of State, 2; County Welfare (relief of indigents), 264; Miscellaneous County Officers, 9; District Attorney, 122; Municipal and Justice's Courts, 139; City Prosecutor, 202; Crime Prevention Bureau, 160; Mayor, 21; Health Department, 21; City Attorney, 23; Public Defenders' Offices, 268; Other legal aid organizations, 49; Lawyers, 353; Bar Associations, 115; Foreign Consuls, 4; Doctors, 43; Hospitals, 57; Clergy, 20; Churches, 19; Red Cross, 38; American Legion, 55; and several hundred cases from over 100 different charities, medical clinics and kindred institutions within the city. These agencies included the Community Chest, the Catholic Welfare Bureau, the Jewish Social Service Bureau, the Masonic Relief, the Salvation Army, the Traveler's Aid Society, the Children's Protective Association, the Y. M. C. A., the Y. W. C. A., Labor Unions, Insurance Societies, and many local charities not so well known nationally.

tions, comments and experimentation frequently would be regarded as time-wasting, impractical, impertinent or even impudent, the purpose of the clinic is to foster this self-orientation, so far as can be done with safety to the client, and within the bounds of propriety as determined by the Bar.²¹

After preliminary instruction, the student in the Southern California legal clinic interviews the clients and witnesses, within the hearing of an attorney. He is given free rein, so long as he does not give legal advice without authorization. After interviewing the client or witness, the student then comes to the attorney, states the evidence which he thinks pertinent, hazards his opinion as to the applicable law, and suggests the procedure to be followed. The attorney determines the sufficiency of the evidence obtained. If it is insufficient the matters which should be developed further are suggested and the student is sent back to the interview. If the student proceeds in an undesirable manner, the attorney comes into the interview room in a matter-of-fact way and unostentatiously takes full charge. After having the statements concerning the case, and after having made a preliminary mental application of the law he believes pertinent, the student normally confers with the attorney, and in this conference the advice to be given is determined. Following the interview, a personal critique occurs, in which every phase of the student's work in the interview is discussed and suggestions are made for future conduct in similar situations. The attorney demonstrates correct procedures, brings the student's weaknesses to his own attention, and helps him to overcome his errors.

To develop the evidence in a case taxes the lawyer's ingenuity and skill to the utmost. No student leaves the Southern California clinic without having had a chance to develop some proficiency in this process. Each student in his clinic course normally deals with a hundred or more clients and witnesses. The student, when he ultimately comes to the Bar, will never deal with worse human material. In the clinic, he is confronted with unreliability, ignorance, craftiness and venality, as well as with the perils of well-intentioned overstatement on the part of a client and his witnesses. A technique in the examination of witnesses is given the law student. He learns to sort statements into true, probable, possible and unreliable categories. In handling clients and witnesses he learns tact and roundabout approaches. He develops the professional manner.

When the student has achieved reasonable proficiency in the interview, he is urged to attempt to examine clients and their witnesses, applying the

21. In Massachusetts and North Carolina, and perhaps elsewhere, the laws regulating the practice of law allow students to appear in behalf of legal aid clients in court proceedings. Such a bill was passed in California in 1929, the provision giving such permission being a minor feature of the act which purported to regulate the whole practice of law. The bill was denied effect, since, upon a referendum, it was defeated at the polls by the voters of the state. However, in the justices' and police courts in the more sparsely settled portions of the state, unlicensed persons are suffered to appear as attorneys.

rules of evidence. He is expected to "get at the story" as he would were the client or witness on the witness stand, confining his inquiry to relevant matters and avoiding leading questions. He is taught to cross-examine the client and the witness in a thorough but friendly manner, as a means of demonstrating to them what they may expect from opposing counsel, and also for the undisclosed purpose of checking their veracity and reliability.

Surely this educational experience alone justifies the maintenance of the clinic. The casebook method may teach the student that there are certain avenues of legal action that can be taken; but it can never teach him how to "get the story."

Lest it be thought that the student in a legal clinic does not handle a variety of matters, there is appended a summary of the work of Mr. X, a typical student in the legal clinic at the University of Southern California in the months of February to May, inclusive, 1933.²²

22. #8037—*Estate of Deceased*: The father of the applicant died, supposedly intestate, and presumably there were undisclosed assets. An investigation was made in reference to both matters, and the scant information obtained was sent to applicant, who was advised that since a fee could possibly be paid, he should correspond with an attorney in private practice.

#8163—*Malpractice*: The client was sued for a balance alleged to be due a physician. The client claimed that the services for which the charges were made were made necessary by the malpractice of the physician in a previous illness. This was investigated, and the case prepared. Since it was determined ultimately that the client could pay a small fee, the matter was then referred to an attorney in private practice for trial.

#8162—*Annulment*: A young woman was married during her minority without consent of her parents, as required by law. Advice was given concerning the possibility of annulling the marriage.

#8169—*Landlord and Tenant*: A landlord wished to secure back rents allegedly due from tenant. The matter was investigated and a legal opinion was prepared. It appearing that a cause of action existed, the client was referred to an attorney in private practice, since a contingent fee could be paid.

#8170—*Real Property*: The client claimed that she was entitled to certain real property in San Diego County, which she hoped to secure since she was destitute. The documentary evidence produced was examined, and was found insufficient to support her claim.

#8158—*Annulment*: The applicant, a minor, obtained a marriage license by falsifying his age, and a marriage ceremony was performed. Subsequently, his wife left and refused to return to him. The applicant was advised upon the validity and existence of his marriage.

#8185—*Fraud*: The client sold a laundry route through the agency of another, who allegedly withheld proceeds and otherwise manipulated the transaction to his own benefit through fraudulent misrepresentations to the applicant. The case was investigated, but without finding necessary evidence or witnesses sufficient to serve as a basis for suit.

#8188—*Workmen's Compensation*: The applicant had received an industrial injury, for which an award was made by the Industrial Accident Commission. Other disabilities ensued, and as the client claimed they related to the original injury, an attempt to reopen the award was made, but was unsuccessful because the original award was conclusive.

#7872—*Divorce*: The applicant sought a divorce. The case was investigated, conferences ensued, and the parties became reconciled.

#7845—*Foreclosure—Home Loan*: The applicant had sought to purchase a small home property, but payments under the Deed of Trust became delinquent, and foreclosure of his rights ensued. An application was made for a Home Owner's Loan from the federal government agency, and all necessary negotiations for the purpose were carried on, until the conclusion of the matter.

#8281—*Loan*: Applicant had small equity in a home property, which was seriously encumbered by trust deeds, special assessments and tax liens. He was in danger of losing all by foreclosure. The status of his title, and of the obligations against the property were investigated, and efforts made to consummate a refinancing plan by means of a new loan.

The rules of the clinic allow a student to follow actual cases through from beginning to end. In this, it goes one step further than Mr. Frank's suggestion that the student study complete case records; here the student makes the records himself. The number of litigated cases which each student may carry through in the clinic course is small.²³ What if they are few? The students at least become acquainted with fundamental type patterns in which many other cases will fall. The method of preparation will be the same. These real cases which are handled in the clinic could be carried over and used as practice court material; and practice court work, if deemed necessary at all, might gain in the process.²⁴

#8400—*Conditional Sales*: Client undertook to buy household appliances on the installment-conditional sales plan. The payments became delinquent. The applicant wished to return appliances and thus secure credit, but the vendor demanded the unpaid balance. A settlement was negotiated.

#8395—*Slander*: Defamatory statements allegedly were made of applicant, and adverse party "called him names". The applicant was advised of his legal rights, but was discouraged from litigating them since the damage claimed was trifling.

#8385—*Bills and Notes—Bankruptcy*: The client, who received County Aid, turned over a note to an agency for collection. The agency did not collect and refused to return the note. The applicant wished the Clinic to recover the note, and to collect the sum it represented. The obligor claimed to have been adjudicated a bankrupt and that the obligation was at an end. The effect of the bankruptcy proceeding was investigated, and arrangements made to recover the note, if ever necessary to collection of sums from the trustee in bankruptcy, upon payment of out-of-pocket costs to the collection agent.

#8477—*Foreclosure—Deficiency Judgment*: Applicant defaulted in payments under a note and mortgage, and the property concerned was sold, his interest being foreclosed. The sale was for less than the amount due, and client wished to avoid imposition of a deficiency judgment. Arrangements were made whereby the judgment was fully satisfied through surrender of the client's right to redeem the property.

#8476—*Trespass*: Client wished advice concerning liability for trespass, when an entry and occupation of land had been made, in reliance upon a purported lease, the lessor having no interest in the property. The advice desired was given.

#8402—*Home Owner's Loan*: The client and her husband owned an equity in realty as joint tenants. The husband deserted her some years ago, and she knew nothing of his whereabouts. To prevent loss of her property needed for her support, she made application for a Home Owner's Loan, which was rejected pending the signature of the husband. Various possible procedures were worked out to meet the difficulty.

#6644—*Bastardy*: For the purpose of securing support for a minor child, applicant sought to have a civil action brought to determine the child's parentage. The suit was brought and the needed declaration secured in a contested proceeding.

#8204—*Unfair Competition*: Suit was brought against client to restrain him from securing or handling business of customers whom he dealt with for a former employer in the conduct of a route. Temporary restraining order was issued, and after negotiations, a settlement between the parties to the advantage of the client was secured.

#8236—*Carriers—Contract*: Client had purchased a round-trip steamship ticket, with the understanding that half of the price would be refunded if the return trip was not made. The claim for refund was refused on the ground that the ticket was not purchased from an authorized agent. Negotiations for settlement were carried on.

#8237—*Misdemeanor—Intoxication*: Applicant was arrested on a charge of driving while intoxicated. While out on bail and awaiting trial, advice was sought concerning what was best to be done. On the facts and the law, the client was advised to plead guilty.

23. Each student will normally carry through three to five court matters, and will work on twice that number of court cases, in addition to non-litigious procedure.

24. Apropos of the proposal of Mr. Frank that more instruction should be given from complete case records, rather than confining it to appellate opinions, the following experiment,

In court cases, the student works in the clinic under the direct supervision of an attorney, who is assigned to the case until it is completed. The student interviews the client and the witnesses, drafts the office memorandum, the pleadings, the trial brief, frames depositions, and makes out all forms of process. At each step, before action is taken, he submits his work to the attorney for approval. The attorney criticizes the work and gives suggestions how to proceed. This critical survey of the student's work builds up proficiency; and as time limits are imposed upon each phase of the work, the student learns that law practice can best be mastered when all work is planned. He learns that inspiration must give way to perspiration.

When the case comes up in court, it is handled by the attorney. The student is privileged to go to court and act as clerk while the case is tried. One limitation has been necessary: the student may not "cut" other law classes in order to attend court. This is a matter of policy which might be modified with proper arrangement. The urge, for the courtroom which the student follows, to the neglect of his formal law school work, is further proof, if any be needed, that the ordinary curriculum is lifeless by comparison.

Mr. Frank rightly makes much of the necessity of bringing the law student in contact with estimable practitioners who are masters of their profession. This is possible in legal clinical work. In the Southern California clinic, the legal work has been undertaken almost exclusively by practitioners of the Los Angeles Bar. Good attorneys are willing to devote some of their time to clinical work, even as is done by doctors in medical

tried in a course in Briefing at the University of Southern California School of Law last year, may be of interest. The clinic attorneys tried a complicated negligence action. The complete case record, from the time the client came into the clinic until the final determination of the cause, was mimeographed, and handed out in installments to the class. The memorandum of testimony given by the client upon his first interview with the clinic attorneys and students was first made available. The students then made a memorandum of law upon the probable rights of the various parties concerned, based upon this testimony. Having done this, they were then given a transcript of the testimony at the coroner's inquest, and were asked to try to reconcile the various stories told by the witnesses. They then briefed the rights of the various parties concerned, noting the variations which would result if the testimony of different witnesses was believed to the exclusion of the story told by others. In this process, in which the substantive law of negligence was involved, the students passed to the testimony given at the trial; making a trial brief on behalf of various parties. Model instructions were drawn. Then actual instructions given at the trial were criticised. As a final exercise, the class members wrote appeal briefs, based upon the facts, the instructions, and the verdicts in relation to the liability of various parties.

The conclusion reached was that Mr. Frank's suggestion of the study of case records is feasible, and that with patience and a sympathetic attempt to combine such study with existing casebook study there are patent advantages to be gained. It should have a definite effect in making the student in a given course see why the rules he studies are important, how those rules are embodied when one seeks to use them for the advantage of a client, and how much their application depends upon facts. The disadvantage of Mr. Frank's plan consists partially in the difficulty in securing records which would be adapted for such studies. In the legal clinic, a definite effort can be made to keep the records throughout the course of legal matters for the ultimate purpose of such use. In using such cases for demonstration, it is perhaps wise to secure the consent of the parties to the matter, which was done in the instance above related.

clinics. Some of these attorneys,²⁵ as is true in legal aid organizations, are novices, and themselves seek the clinical experience as apprenticeship training. On the other hand, others may be truthfully said to be experts in their fields. At the Northwestern University clinics and in the legal clinic at Duke University, the instructors are leaders in their specialties.

It seems apparent that the casebook study of substantive and procedural law is almost exclusively conducted from the standpoint of the existence or non-existence of a right which the courts will enforce through litigation. Aside from some few procedural courses, the emphasis in casebook study is upon what constitutes a substantive legal or equitable right if certain facts are assumed. This approach is contrary to that of the lawyer considering the client's problem. The practicing lawyer or clinic student must first get all the evidence he can, and then must act, guided (1) by what the client desires, and (2) by what remedy or remedies may be available to secure the relief the client wishes, in view of the evidence at hand.

The function of the lawyer is, after all, that of helping clients avoid controversy, as well as that of terminating human controversies after they have arisen. In either process, the tools of the lawyer extend beyond the technique of litigation. The non-litigious procedures of successful conciliation, compromise, arbitration, declaratory relief and legislative relief have great importance at the Bar, and law schools teach but little concerning them.²⁶ Work in the clinic brings home to the student the necessity of familiarizing himself with the technique of these procedures.

With few exceptions, the student who comes into the legal clinic at first proceeds to determine all matters from the standpoint of whether a suit might be won against the adversary. To illustrate by an actual experience: there was a student in our legal clinic who had a "B" average in his law school work. He heard a client's story and consulted a clinic attorney. After three days, in which he spent all of his spare time in the library, he presented a good brief to the attorney, saying: "I have looked up all the law; I am certain that we have a cause of action against X, and, if you

25. There are now twelve attorneys on the staff of the clinic at the School of Law of the University of Southern California. These include lawyers who have received their legal training at Harvard, Yale, Stanford, Utah, the University of British Columbia and the University of Southern California. Eleven of these attorneys are unpaid. Some have put in full time at the clinic over a period of years, without compensation. Others have devoted from half a day to several days a week to the clinic.

26. "If the profession lacks perspective, may it not in part be due to the failure of the schools to deal broadly with the law as a science; if it shows too little restraint in the use of the powerful weapons furnished by the courts, may not the schools be at fault in keeping their students submerged in a technique which over-emphasizes litigation; and if it makes no adequate contribution to the improvement of the law, may this not be the natural result of the attitude of the schools in largely ignoring the importance of legislation as a means of adjustment to social changes?" Sunderland, *The Law Schools and the Legal Profession* (1931) 7 AM. L. SCHOOL REV. 93, 94.

agree, I will draw up a draft of a complaint for your approval." Nearby was Mr. A, a man who was always on the verge of scholastic disqualification. The attorney asked Mr. A what he would do. He responded: "I would call up Mr. X and ask him what settlement he will make with our client." Mr. A was sent to the telephone and, after fifteen minutes, a concession was received from Mr. X which disposed of the case. This illustrates also why a student who has been poor scholastically frequently will excel in actual practice in the clinic. Less often, the "A" or "B" student is so impractical that it is difficult for him to apply his knowledge to real problems of real people.

Legislation which is the product of social and economic research and experimentation is relatively scarce. It seems to be conceded that the lawyer of this generation has a social responsibility in the enactment of good laws, based upon premises which can be supported by facts, and seeking ends which are demonstrably desirable. One of the public quarrels with lawyers is that they have consistently raised objections, born of *stare decisis*, to forward-looking legislation.²⁷ The clinic method can show the student the importance of legislation; it shows that some existing laws defeat justice, that others impair it, and that still others never even approximate it, and may also serve to indicate where legislation is desirable to fill the gaps and rents in the legal fabric.

The case records of the clinic, many thousands in number, are used at Southern California, the University of California, and at Duke University to show how the law actually works, where it is deficient, and where it is effective, and where it is taken advantage of by the knaves and the rogues. At the Southern California law school, advanced clinic students have made case surveys in regard to the practices of installment sales concerns. Copies of their contracts were collected. Based upon this information the law was briefed upon each of the clauses of the form contracts

27. "We are in a temper to reconstruct economic society as we were once in a temper to reconstruct political society, and political society may itself undergo a radical modification in the process. I doubt if any age was ever more conscious of its task, or more unanimously desirous of radical and extended changes in its economic and political practice.

"The temper of the age is very nearly summed up in a feeling you may put into words like these: 'There are certain things we must do. Our life as a nation must be rectified in certain all-important particulars. If there be no law for the change, it must be found or made. We will not be argued into impotency by lawyers.' . . .

"Has not the lawyer allowed himself to become part of the industrial development, has he not been sucked into the channels of business, has he not changed his connections and become part of the mercantile structure rather than part of the general social structure of our commonwealths as he used to be? Has he not turned away from his former interests and duties and become narrowed to a technical function? . . .

"He does not do what he ought to do. For there was never a time in fact, when his advice, his disinterested and earnest advice, was more needed than it is now in the exigent processes of reform, in the busy processes of legislation through which we are passing, with so singular a mixture of hope and apprehension." Woodrow Wilson, *The Lawyer and the Community* (1910) 35 AM. BAR ASSN. REP. 419, 423, 435-6.

of these companies, many of which are currently relied upon to justify unconscionable oppression of debtors. These briefs have been kept on file, and on more than one occasion have been carried into court at a minute's notice and there used effectively. This survey showed that it is socially desirable to enact the Uniform Conditional Sales Act. With actual data available, showing the abuses existing because of the absence of such a statute, it may be that the problem can be presented effectively to the California legislators. The legal clinic students at the University of California²⁸ and Duke University also have done this type of work.

The clinic work brings student weaknesses into the limelight. These weaknesses may consist of a lack of ability in legal analysis, or of ability to synthesize various bodies of legal lore effectively. Traits of indecision, of unwillingness to take responsibility, of unreliability, are readily disclosed. Temperamental inabilities to deal with people are brought to light, and lack of courtesy, patience, tact, concentration, and professional point of view may be readily recognized, and to some degree corrected.

Bar examiners often have wished that they could have detailed information concerning the capabilities of the student who is seeking admission to practice. The reports that can be furnished by law schools at the present time go little further than attesting the mental prowess of the student. The deans and faculties of law schools who wish to secure employment for young lawyers or who are asked to recommend their former students for employment sometimes need more data than they possess in order to give an intelligent judgment.

In the legal clinic, such information can be secured about the student, his character and his capabilities. Everyone in the legal clinic at the University of Southern California, from the office boy at the outer door to the Director in his private office, has the student under observation and periodically rates each one upon a number of characteristics. Rather than to detail them here, we may have reference to a report actually made on the work of a student, herein designated as X:

REPORT ON WORK OF STUDENT

S. C. Legal Aid Clinic Los Angeles

Name X Semester: Fall, 193—.

Grade in Clinic Course: C

The following report is a composite statement of the reports made upon the above student by the members of the clinic staff.

28. See Stone, *Law Students and Legislation* (1934) 7 AM. L. SCHOOL REV. 1138, 1146, with reference to the work of the University of California in connection with the legal aid instruction. Cf. Clark, *Law Professor, What Now?* (1934) 7 AM. L. SCHOOL REV. 1009, 1013.

- 1—Excellent
 2—Good
 3—Fair
 4—Poor
 5—Failure
 0—No opportunity to observe

As many ratings are made opposite each characteristic as reports received. The rating given by the Director of the Clinic is the last listed in each case.

Personal appearance	2	2	2	2	2	1	1	2
Cultural qualities	2	3	3	2	2	1	1	4
Professional Manner	2	4	3	2	1	1	1	3
Dependability	2	0	2	2	1	1	2	2
Promptness	2	0	2	2	1	1	2	2
Tact	2	0	2	2	3	2	2	2
Courtesy	1	3	2	1	1	1	1	1
Patience	2	0	2	2	0	0	0	2
Firmness	2	0	2	1	1	0	0	3
Judgment	2	0	2	2	2	1	2	2
Sensitivity to human or social problems	2	3	2	2	0	2	2	1
Sense of ethical conduct	2	3	3	1	4	4	3	3
Thoroughness	2	0	2	1	2	2	2	2
Attitude toward course	1	0	2	1	0	0	0	1
Legal analytical ability	2	0	2	2	1	0	2	3
Legal accuracy	2	0	2	2	1	0	2	3
Legal resourcefulness	2	0	2	2	1	0	2	2
Adaptability to office routine	2	0	2	2	2	2	2	2
Office records	2	0	2	2	1	2	2	2
Cooperation with others	2	0	2	2	2	2	2	1

REMARKS: Compiled comments:

Mr. X has been earning his way through law school. This has diminished time available for effective clinical work. He is pleasant, almost too much so, giving an impression of boyish irresponsibility, and his professional manner is undeveloped. He is very solicitous for the welfare of any person he believes to be the victim of impositions. A long conference was had with him concerning his poor sense of professional propriety and ethical conduct. His attitude has been that law is not justice, and that if an end determined to be just is impeded by any rules (such as that prohibiting contact with an adverse party directly where such party is represented by counsel), he should not be bound thereby. In the conference he was compelled to admit, after discussion, that such a course was destructive to all law, and that to allow such conduct would in the end work more injustice than that occasioned by any adherence to ethical rules. After this conference, his conduct was improved, and the staff has no feeling that he would deviate from ethics in practice. Mr. X worked directly under supervision of the Director in one case, and was diligent and helpful in it. The student's legal knowledge is not vast—he is not a scholar; but given the proper cause, he is a dogged and untiring champion.

These reports form the basis of remedial assistance given to the student. The final report, together with a detailed report upon the student's

case work, forms his clinic record, copies of which are forwarded to the Dean of the law school. For the limited period during which these reports have been made, these estimates have proven accurate to a remarkable degree in predicting success or failure in the Bar examinations, and in indicating those who are least likely to succeed in practice.

The ethics of the student are always under observation. His conduct in dealing with adverse parties is very revealing. In the Southern California clinic there is a group of students who have law office employment. Such employment has a recognized psychology; it tends to mold the student's ethical approach to law practice. He idealizes the practitioners in his first office; he is intoxicated by his first steps in practice, and believes that *his* office is perfection. It sometimes takes much careful work with the student to overcome the unethical approach of one who, in his law office contacts, has accepted certain questionable procedures as right and proper. When we make the legal clinic the first real law office into which the student goes, we can maintain standards which will encourage ethical development of the law student. Contrast the clinic emphasis upon the lawyer's obligation to serve all people, rich or poor, with the experience of one of our recent graduates who secured a law office position and was told that the first three things he should find out from a prospective client were: "How much has he got?" "Where is it?" "How soon can we get it?"

Thus, the staff of the legal clinic can help a man to develop his capabilities; and, conversely, can form a judgment of a man's probability of success at law practice, of the type of work which is suitable for him, and of innate qualities which make for ethical leadership in the profession. Some judgments indicate that there are students with passing marks in their law school studies who never should attempt the practice of the law. A defect of the present law curricula is that such discoveries are deferred until the third year in schools where clinical work is done, and until after graduation in schools where no clinical training is given the student. Ultimately, clinic work graded to the progress of the student may be prescribed throughout the law school course. If this were done, relevant data would be available for the solution of many perplexing problems that arise in the selection, rejection and disqualification of students.²⁹

The clinical type of instruction is difficult for the instructor. The third year law student is quite conscious of the fact that he is nearly ready for admission to the Bar. The intense scrutiny of the student's personal appearance, his use of language, his ethics and his use of legal knowledge, produces in some a mild annoyance, while in others a real antagonism may

29. The extension of procedural work throughout the three years has been advocated. Such extension would be a great aid to formal casebook study. If the average law student were given some contact with the *use* of legal materials, the casebook study would become less ambiguous, and his effectiveness could be ascertained in action.

develop. This is another reason why clinical training, gauged to the progress of the student, should begin early in the law course. However, experience shows that the majority of law students are "good sports" in this phase of clinic work; and many of those few who have been antagonistic to the clinic process have returned after one or two years of actual law practice praising it.

We may concede that one of the immediate tasks of law schools is to develop and teach a system of legal thought which is suited to the necessities of the present. We must have actual fact situations to think about, and the clinic, which is in intimate touch with the present legal problems of everyday people, provides first-hand material. To relate law to life, we must somewhere study life, not merely a record of it. The student develops his perspective in clinical contacts with men and women of every class and background, all of whom are afflicted with the most potent social factor—lack of money. Casebook study does not develop his points of view nor his human sympathies as fully as does clinical experience.

The use of various methods, legal and quasi-legal, in the clinical work of the law student makes for orientation, and a better understanding of legal methods as one means of social control. If some, like President Hutchins³⁰ and Dean Clark,³¹ despair of the union of social sciences and the law, the clinic may be a ray of hope. In the clinic the inter-relation of law and the social sciences is in action, not merely in scholastic meditation.

Is there enough time in the present law school curriculum to include such training? If it is worth while, time should be made for it. In those law schools which now offer a four year course in law, the time is already available and can be appropriated. Lawyers who wish to see a year of apprenticeship intervene between the end of the present law school course and admission to the Bar may well consider whether this apprenticeship should not take the form of clinical work at a law school, rather than that of haphazard quartering of neophytes in law offices. In a law school such training is concentrated, regulated, and, above all, conducted according to demonstrable standards.

30. Since all clinical work, to be such, requires adequate instruction and supervision, such comments as those made by President Hutchins, and others, to the effect that if Mr. Frank's Clinical Lawyer-School plan were adopted, there need be no law schools, are clever but not convincing. It would be entirely appropriate on the same line of comment to advocate that all medical schools should go out of business, inasmuch as the clinical training now given could presumptively be given in doctors' offices. As indicated, *infra*, the clinic, through concentration of case volume, through its existence for the student and not for the benefit of the law partners, and its plan of instruction, has many advantages over a law office as a means of instruction, and the establishment of a legal clinic is thus more than the birth of another law office or the engrafting of a law office upon a law school. Cf. Hutchins, *The Autobiography of an Ex-Law Student* (1934) 7 AM. L. SCHOOL REV. 1051, 1053.

31. "Even the much heralded union of law with the other social sciences lags far behind the publication of the bans betokening ultimate marriage." Clark, *Law Professor, What Now?* (1934) 7 AM. L. SCHOOL REV. 1009, 1011.

But clinical training is possible in the three year law school. It has been included at Duke, at Northwestern, and at Southern California; and in a great number of other universities it has been found possible to conduct some semi-clinical work in legal aid societies. The time required of the student in the clinic can be regulated. It is safe to say that at Southern California we never have had a complaint from any full time student on the ground that clinic work takes too much time.

From our experience, it seems that legal clinic work feasibly might be spread over three years. The desirability of this in building the capabilities of the student has been touched upon. First year students may undertake primer work in practice. They can learn the use of process, and undertake the service of it. They can learn the jurisdiction of various courts and administrative tribunals. They can see the functions of court and jury demonstrated; they can see what an attorney does, both in court, and in the clinic office. Second year students can aid in securing testimony; they may undertake interview work, within carefully defined limits. They can become acquainted with remedies, and can learn a lawyer's techniques by association with more experienced students and lawyers in the clinical work. Such a preliminary training will allow the third year student to specialize in the most difficult legal problems; he can be an understudy for the attorney at every step in arbitration, conciliation, and litigation, and can be given supervised but substantially complete responsibility for work in solving the clinic cases.

Within the compass of one article, it is not possible to detail all of the operations of the legal clinics now existing. It is not possible to set out the detailed procedures adopted to check the work of the student, the devices employed to train them to plan their work, and to do it regularly and promptly. Special instructional procedures used with varying types of cases cannot be described adequately save in a book. Enough has been set forth here, perhaps, to indicate that legal clinics are effective as a means of legal education and as an aid in furthering its objective of fitting students for the practice of law.

Is the legal clinic a more effective educational device than the methods now in use? The current devices include (1) the casebook system, (2) practice court, moot courts and law clubs, (3) practical training of the young lawyer in law offices after he reaches the Bar.

Can we not agree that a good legal education involves training both in principles and in the art of their application? The problem then is to balance the two components in the law school curriculum, having reference to its objectives. Though the teaching of law from casebooks may minimize the arts of practice, yet with too much reliance upon clinical method the student may suffer for want of legal principles and philosophy which

can guide him in his work. Clinical experience in law is valueless unless the student has a background of legal philosophy and principle to give direction to his efforts; most legal educators appear to agree that the casebook method is the most effective yet devised for the purpose of teaching legal principles. Clinical instruction results in widening and coordinating the knowledge of substantive law principles, but it goes further and cuts down the gap between law school training and the requirements of practice, beyond the power of casebook instruction to do so:

(A) The applicability of legal principles depends upon the existence of certain facts; casebook study does not reveal much of the process by which the facts stated in an appellate opinion were determined to be such, to the exclusion of other evidence. In studying appellate opinions, the student is not trained to consider which evidence is trustworthy and which is not, since decisions ordinarily are based upon the facts found to exist by the trial court or a jury. In the art of law practice no process is so difficult as that of securing evidentiary material and of selecting from it the evidence which is to be presented to a court in furtherance of a client's cause. The clinic gives the student experience in this process.

(B) The casebook system teaches nothing of the art of handling people. Clinic work involves it at every step. This bears directly upon the conduct of legal matters, and also upon the lawyer's problem of attracting and keeping a clientele.

(C) The law faculties in our larger law schools have little opportunity, from classroom performance alone, to enlarge the practical capacity of the average law student or to train him to be an effective practitioner. The clinic is a device especially suited for such a purpose.

(D) There is no doubt that many unethically-minded students could write good papers in legal ethics. Courses in ethics are an inadequate basis of judging moral fitness to practice at the Bar. The clinic experience makes it possible to observe the student in action in the face of ethical problems he will meet in practice, supplementing the present inadequate classroom observation of the student; and some moral guidance can be given in a clinic.

(E) The casebook system (outside of a few procedural courses such as evidence and code pleading) does not teach how to bring causes to court nor the procedural and practical details involved in handling them there. Some law professors stress the procedural details in cases studied in substantive law fields, but these details are as frequently minimized or overlooked. The clinic work gives some practical instruction in procedure, and in the strategy of the law suit. Such procedural and practical instruction is not formal—it is attended by all of the reality which Mr. Frank stresses.

Some law schools are more than local institutions. Their faculties are not particularly interested in clinical work, since all of its processes would of necessity involve local procedural training. But any of our procedural systems, once learned, becomes a ready means through which others may be learned by the simple processes of association and comparison. We have too many lawyers now who have a one-track mind when legal procedure is involved. If the clinic can acquaint a law student with one system other than that under which he will actually practice, and thus enlarge his legal horizon, another current need at the Bar will be met in part.

Where courses of study have not become traditional, the clinic may well supersede practice court, if in exchange the student is given an opportunity to attend real trials where his own handiwork is given the acid test. Courses in introduction to law, briefing, legal draftsmanship, pleading, formal practice courses, courses in ethics, and others, can with profit to the student be integrated with the legal clinic, if far-seeing professors are willing to make the effort at fusion, and to study the limits and conditions of the integration.

In all of these matters, the clinic possesses the undoubted advantage of reality. There are real problems of real clients to be solved, and the success or failure of the effort is of consequence. This is an incentive to better work. Instructors in practice court work have to use great ingenuity in inventing, procuring or adapting case statements. The very number of these necessary for the training of one class precludes completeness or much semblance to the complete record produced in an actual trial. If actual court experience is not to be obtained in clinical work, as a substitute for all this, the case situations received in clinic can be adapted readily for practice court instruction, and the court work should become less removed from reality than now, when so many practice cases seem wholly composed of equal parts of farce and fancy.

Moot court and law clubs traditionally have been concerned with appellate court argument and procedure. Even Mr. Frank concedes that the processes of casebook study and instruction have produced men who are able to do appellate court work. The average lawyer seldom appears before appellate courts. It is of much more moment to give him training which will enable him to prepare and try cases more effectively in the lower courts, and thus keep out of courts of appeal. The practical clinical experience of preparing office memorandums and trial briefs (to say nothing of practice in preparing legal instruments and pleadings), trains for more effective written presentation of cases on appeal.

Whether a legal clinic course might supplant any or all of the traditional means of acquainting the student with practice depends upon (1) its case volume, (2) its case variety, (3) arrangement of student schedules,

so as to permit actual court attendance, (4) whether the student is permitted by law to conduct court cases, (5) amount of individual supervision possible, and (6) attitude of faculty in attempting integration. In any event, the clinic work at least will supplement the existing methods, and with them draw the student nearer to the actualities of law practice.

The ultimate question is whether the law school shall attempt to bridge the gap existing between present day law school instruction and all that practical knowledge and actual experience which the young lawyer needs, to practice law effectively.

Although legal educators confess the inadequacy of present curricula to achieve full preparation for practice, they seek to avoid the objection by declaring that this preparation is now acquired in practice, and that practical experience should wait until after a man comes to the Bar. It is perhaps anomalous that legal educators have insisted that "reading law" in a law office is inadequate preparation for the Bar on one hand, while assuming that contact with practice in the ordinary law office is an adequate education in that important phase of the lawyer's training.³²

Certainly no law school could teach the art of practice in its entirety; but it must be recognized that no law school purports to teach the whole of substantive law. The law school curriculum is designed to train students in general principles of substantive law, and one would confess educational inadequacy if it is assumed that general principles in the art and technique of practice cannot likewise be made the basis of law school instruction.

Law office training is not conducted in accord with uniform standards. The experience that a man can secure in an office is no greater than the practice of that office. If it is a large office, it will tend to be a wholly specialized experience; if it is small, the relatively few cases make new experience sparse and distributed over a long period of time. The volume of cases and their variety in clinical work present a happy medium; and, even where the case load is small, there is an organized effort to use each case for the maximum of instruction.

The law office is not an educational institution. Whether engaged in a profession or business, the lawyers in a law office are concerned with handling matters for clients in the hope of financial reward. The few young lawyers who find work in large metropolitan law offices (which are

32. "The last decade has marked the almost total disappearance of law office training as preparation for admission to the Bar. No one familiar with the opportunities for student study in the modern law office can view this with regret, for there is in general not even a family resemblance between the law office training of recent years and that of a generation or two ago. . . . The young man employed in the modern law office has no time to 'read law' as the term was used in a past generation. He is an employee, and though it may be possible for him to learn something of his employer's business, this is his affair and not that of his employer." Horack, *Law Schools of Today and of Tomorrow* (1930) 6 AM. L. SCHOOL REV. 653, 654. Although this comment was made as to "reading law" it undoubtedly carries over into the field of learning practice in the law office.

organizations, not individual law practices) may receive some post-law school training; but such training is for the benefit of the office. It is a sink or swim process, with a ready replacement at hand if the student-lawyer falters, or takes too long to come to himself. The function of the young lawyer in such an office is specialized, and he may never become well-rounded in his professional training.

If, on the other hand, the young lawyer immediately begins practice for himself, his day-by-day experience must remain his only teacher. Inevitably he must make mistakes, and in each case someone suffers. If the client loses because of his inexperience, the Bar as a whole is prejudiced. Out of unfortunate experiences with incompetent lawyers, as well as dishonest ones, grows public distrust of law and lawyers. In the West during these days, it is probable that fifty *per cent.* of all law school graduates are beginning law practice in small towns, nearly always "on their own" or in association with other recently admitted lawyers. Many of these who have had clinic training report that they have been able to build a law practice rapidly, because they did not bear the mark of inexperience.

There are not enough *good* law offices to train the graduates of all of our law schools or any considerable number of them. Any formal post-graduate apprenticeship system would involve contact with offices whose personnel have educational and ethical standards below those we would like to see in the Bar of tomorrow. One may doubt whether many law offices today would discipline the young lawyer who makes an ethical mistake to its advantage.

The members of the Bar themselves are unwilling to undertake the education of the young lawyer. It is the practitioner who is urging some return to apprenticeship. But we can not expect aid of the Bar as such. The majority of lawyers at the Bar are individualists. They can not unite effectively for the purpose of cleaning up the legal profession; they present a disorganized front in the fight against competitors who are united in the unlawful practice of the law. Can it be supposed that they can unite effectively at this time for providing additional legal education under the auspices of the Bar? Surely, one may be forgiven for expressing a doubt that they can or will without first perfecting the organization of the Bar itself.

Therefore, if we believe that the ultimate aim of legal education should be to train a man theoretically and practically for the practice of law, as it commonly exists, the establishment of legal clinics is desirable. There is evidence that the existence of a legal clinic is a great benefit to the student and to the public. There is likewise evidence that the establishment of a legal clinic need not disrupt existing curricula, nor need it displace any needed instruction now given. There is some indication that it may be integrated with some existing practical courses, with benefit to the instruc-

tional value of both. There are many considerations tending to prove that the lack of practical instruction, when left to the law office, delays the advance of the young lawyer; and when given, is neither uniform in degree, scope or standard. There are many young lawyers who start practice without preceptors; and as to these, clinical training fills a great need, and serves to protect the public from inexperience. And finally, although it has not heretofore been mentioned, the existence of a legal clinic in itself seems to be one of the best means of advancing public relations with the Bar: it is tangible evidence that lawyers and law schools are concerned about the affairs of those who are under-privileged and financially distressed in these troublous times.